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3 PEOPLE OF THE STATE OF NEW YORK/BRONX COUNTY

4

5

VS

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INV. INTO DEATH OF ALBERT ACOSTA,

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15 PRESENTED BY: A.D.A. SCACCIA/TD-B52

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17 REPORTED BY: CHERYL LAUREL

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Trial Exhibit No.: 38

21

DATE: APRIL 16, 2001

ID \_\_\_\_ Evid \_\_\_\_

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PANEL & TERM: F PANEL & 5TH TERM

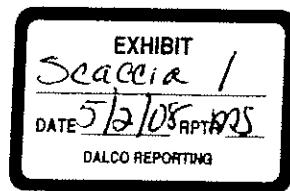
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GRAND JURY #: 42,140

24

DOCKET #: IBNA

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CL2

1                   MR. SCACCIA: Good afternoon, ladies and  
2 gentlemen, my name is Christine Scaccia. I'm a  
3 Senior Trial Assistant in Trial Division B-52.

4                   This is the case, an investigation into the  
5 death of Albert Acosta

6                   I would now ask the Foreperson to determine  
7 whether a quorum is present

8                   THE FOREPERSON: Let the record reflect that a  
9 quorum is present.

10                  MS. SCACCIA: Ladies and gentlemen, before we  
11 begin hearing evidence in this case I'm going to give  
12 you a publicity charge.

13                  You should not read, listen, or watch news  
14 accounts about matters being presented to you. In  
15 the event that you have read or heard news accounts  
16 about a case before evidence concerning that case  
17 while it is pending before you, you must disregard  
18 anything that you have read or heard, other than that  
19 which is submitted to you as evidence.

20                  If you have read or heard anything in the news  
21 media about a case, you must not communicate that  
22 information to your fellow Grand Jurors. If, because  
23 of something you have read or heard about a case, you  
24 feel that you can no longer be impartial and cannot  
25 reach a determination about a case solely on the

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1 basis of the evidence and instructions presented, you  
2 must tell the Foreperson and the Assistant District  
3 Attorney.

4 Remember, that you should not discuss the case  
5 being presented to you with anyone other than your  
6 fellow Grand Jurors and the Assistant District  
7 Attorney. You may only form an opinion about a case  
8 on the evidence presented, only after the case has  
9 been submitted to you by the Assistant District  
10 Attorney with specific legal instructions applicable  
11 to the case before you.

12 At the end of the case the Assistant District  
13 Attorney who presented it will give you charges for  
14 your consideration.

15 If more than one defendant is presented you must  
16 consider and vote the charges submitted to you as to  
17 each defendant individually. You may not necessarily  
18 be re-read law on each charge. Now if you do not  
19 remember the law or if you are confused or have  
20 questions please feel free to ask the Assistant  
21 District Attorney presenting the case.

22 Now, given the nature of the date of  
23 February 12th of the year 2001, at the location of  
24 1700 Metropolitan Avenue here in Bronx County, and  
25 the death of Albert Acosta.

CL4

1           Is there anyone who knows anything about this  
2        case that would influence them in anyway?

3           Seeing no show of hands, the People are going to  
4        begin their presentation of the evidence with the  
5        calling of Mr. Terrence Alston.

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2                   TERRENCE ALSTON, after having been duly sworn,  
3 testified as follows:

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5                   EXAMINATION BY MS. SCACCIA:

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7                   Q.     Mr. Alston, you have to keep your voice up  
8 nice and loud so everyone can hear you.

9                   Please state your full name and the county you  
10 live in?

11                  A.     Terrence Alston, Bronx.

12                  Q.     Mr. Alston, how old are you?

13                  A.     Thirty-four.

14                  Q.     Are you familiar with the location of  
15 1700 Metropolitan Avenue here in Bronx County?

16                  A.     Yes.

17                  Q.     How is it that you are familiar with that  
18 location, sir?

19                  A.     I live in Parkchester, I live in the area.

20                  Q.     How long have you lived in the area?

21                  A.     Since '94.

22                  Q.     I want to draw your attention now going  
23 back to on or about October 1st, of the year 2000.  
24 Were you living in Parkchester that day?

25                  A.     Yes.

CL6

1           Q.    Can you please tell the Members of the  
2           Grand Jury if anything unusual took place at about  
3           that time?

4           A.    Yes.

5           Q.    What happened?

6           A.    A security officer approached me about  
7           accepting a contract to kill another security  
8           officer.

9           Q.    Now, where were you when this security  
10          officer approached you?

11          A.    In front of my building, 1560 Unionport  
12          Road.

13          Q.    Have you ever talked to this security  
14          officer before?

15          A.    No.

16          Q.    When he approached you, did he call you by  
17          name?

18          A.    Yes, he called me by my nickname, Murdock.

19          Q.    Now, when he first approached you, were you  
20          alone or with other people?

21          A.    I was with my family.

22          Q.    Did you go somewhere to talk to him or did  
23          he say this in front of your family?

24          A.    No, we went over to the other side and  
25          talked.

CL7

1           Q.     Now, what exactly to the best of your  
2     recollection did this security officer say to you and  
3     what if anything did you say back to him?

4           A.     He asked me would I accept a contract to  
5     kill another security officer. I told him, yes.

6           Q.     Did he tell you why?

7           A.     He said it was over a little conflict, over  
8     a girl.

9           Q.     Now, was there ever an arrangement made  
10    about a price?

11          A.     No.

12          Q.     Was there any inquiry made about the price?

13          A.     I told him I'll get back to him about the  
14    price.

15          Q.     Now, this security officer, did you ever  
16    have any other conversations after that?

17          A.     Yes, a couple of days later.

18          Q.     Okay. How did that happen?

19          A.     He approached me, he gave me a master key  
20    to the building to get to the basement. He showed me  
21    where I was going to do it, and he also asked me if I  
22    had a gun. He told me he would give me a gun. I  
23    told him I had a gun already, I didn't need a gun.

24          Q.     Now, this master key, what is that master  
25    key for?

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1 A. To get to the basements and the tunnels.

2 Q. Now you are a tenant in Parkchester?

3 A. Yes.

4 Q. Do tenants have access to the basement or  
5 tunnels?

6 A. No.

7 Q. This master key that he gave you, it would  
8 allow you access to the basement and tunnels?

9 A. Yes.

10 Q. Did he tell you who the security officer  
11 was that he wanted to kill?

12 A. No.

13 Q. Other than discussing that, did he tell you  
14 when he wanted it to take place?

15 A. No.

16 Q. Did he discuss with you how it would take  
17 place?

18 A. Yes.

19 Q. Could you tell the Members of the Grand  
20 Jury, describe how it was going to take place?

21 A. It was going to happen over in the 1700  
22 area of the Parkchester basement. He would lure him  
23 down to the basement to where I would be at.

24 Q. Now, on this second location, did he talk  
25 to you about prices again?

CL9

1 A. No.

2 Q. Mr. Alston, did there come a time when you  
3 actually carried out this contract for this security  
4 officer?

5 A. No.

6 Q. Why is that, sir?

7 A. I got incarcerated October 16th.

8 Q. Of 2000?

9 A. Yes.

10 Q. During the date of February 12th of 2001,  
11 were you still incarcerated?

12 A. Yes.

13 Q. The security officer who approached you on  
14 those two occasions, Mr. Alston, do you know his name  
15 to be Anthony Maganello?

16 A. Yes.

17 MS. SCACCIA: I have no further questions of  
18 this witness.

19 Do the Members of the Grand Jury have any  
20 questions?

21 Anyone else?

22 Q. Mr. Alston, prior to you having this  
23 conversation with the security officer by the name of  
24 Anthony Maganello, had you ever seen him in the area  
25 before?

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1 A. Yes.

2 Q. When you were living in the area during the  
3 time of October of the year 2000, were you hanging  
4 out in a particular place?

5 A. Yes.

6 Q. Were you always there in the same area?

7 A. Yes.

8 Q. Had you ever seen him when you hung out in  
9 the area in the past?

10 A. Yes.

11 Q. My Alston, when you were initially  
12 approached by the security officer to do this  
13 contract, were you physically incapacitated in any  
14 way?

15 A. I was shot up. I was shot three times,  
16 once in my head, one in the left arm and one in my  
17 right leg.

18 Q. How much before this conversation with the  
19 security guard did this happen?

20 A. Like right about two weeks after I came out  
21 of the hospital.

22 Q. When were you shot?

23 A. I was shot August 22nd of 2000.

24 Q. From the time that you got out of the  
25 hospital until October when you had this conversation

CL11

1       were you immobilized, were you walking?

2           A.    No, I was in a wheelchair.

3           MS. SCACCIA:    Anyone else?

4           Seeing no show of hands, this witness is  
5           excused.

6           Thank you.

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C E R T I F I C A T I O N

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I, CHERYL LAUREL, a Grand Jury Reporter  
within and for the State of New York, County of the  
Bronx, do hereby certify:

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That the within transcript is a true and  
accurate record of the testimony given in the case of  
the People of the State of New York versus  
INV. INTO DEATH OF ALBERT ACOSTA in the F PANEL & 4TH  
on APRIL 16, 2001.

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IN WITNESS WHEREOF, I have hereunto set my  
hand this 17TH day of APRIL, 2001.

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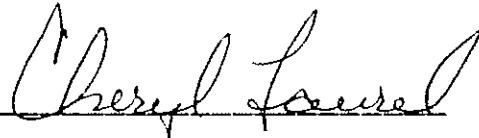
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CHERYL LAUREL

CL1

1 INVESTIGATION INTO DEATH OF ALBERT ACOSTA

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3 A.D.A. SCACCIA/TD-B52 FROM: 4/16/2001

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5 DATE: APRIL 18, 2001 F PANEL & 4TH TERM

6 REPORTER: CHERYL LAUREL

7 GJ #: 42,140 DOCKET: IBNA

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13 MS. SCACCIA: For the record, good afternoon,  
14 ladies and gentlemen, my name is Christine Scaccia,  
15 I'm an Assistant District Attorney in Trial Division  
16 52.

17 This is a continuation of the investigation into  
18 the death of Albert Acosta

19 I will now ask the Foreperson to determine  
20 whether a quorum is present.

21 THE FOREPERSON: Let the record reflect that a  
22 quorum is present.

23 MS. SCACCIA: The People now call Walter Cobb.

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2                   WALTER COBB, after having been duly sworn,  
3                   testified as follows:

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5                   EXAMINATION BY MS. SCACCIA:

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7                   Q.    Mr. Cobb, could you state your full name  
8                   and county of residence for the Members of the Grand  
9                   Jury.

10                  A.    Walter William Cobb, county of residence is  
11                  the Bronx.

12                  Q.    Mr. Cobb, are you employed?

13                  A.    Yes, ma'am.

14                  Q.    For who do you work?

15                  A.    Parkchester, Bronx, New York.

16                  Q.    Okay. What type of work do you do?

17                  A.    Maintenance.

18                  Q.    How long have you done that, sir?

19                  A.    Eleven years now.

20                  Q.    I want to direct your attention to  
21                  February 12th of 2001, specifically to the building  
22                  of 1700 Metropolitan Avenue here in Bronx county.  
23                  Were you present at that building on that day?

24                  A.    Yes, ma'am, I was.

25                  Q.    Now, is that the building that you're

CL3

1                   normally assigned to Mr. Cobb?

2                   A.     No, ma'am, I'm not.

3                   Q.     How did you become assigned to that  
4                   building that day?

5                   A.     I'm known as a miscellaneous person. I  
6                   fill in for people that call in sick or out that day.  
7                   I was sent to that building.

8                   Q.     Now, what time did you start work that day?

9                   A.     8:00 in the morning.

10                  Q.     Okay. About what time did you get over  
11                  towards 1700 Metropolitan?

12                  A.     About 10:00 a.m. or ten minutes after  
13                  10:00, 10:10.

14                  Q.     When you approached that building how were  
15                  you going to go inside of that building, were you  
16                  going through the front door or were you using  
17                  another door?

18                  A.     Well, the rear door is situated on the  
19                  avenue itself. I approached the rear door.

20                  Q.     Now, this rear door is that a doorway to  
21                  the public or do the tenants have access?

22                  A.     Yes, ma'am.

23                  Q.     How do you get into that door?

24                  A.     Well, we use what we call a com key and  
25                  it's electronically controlled and you push the door

CL4

1 and it opens.

2 Q. So it's a electronic lock?

3 A. Yes, ma'am.

4 Q. Do the tenants have such a electronic key?

5 A. Yes, they do.

6 Q. So tenants can go through the door?

7 A. Yes, if you live in the building cause each  
8 com key is assigned different codes for different  
9 buildings.

10 Q. Now, as you were approaching 1700  
11 Metropolitan Avenue, did something unusual take  
12 place?

13 A. As I approached the rear exit which is on  
14 the avenue itself I heard what appeared to be a  
15 muzzle, four shots.

16 Q. Four gunshots?

17 A. At least four gunshots, at least four or  
18 five steps before I hit the door, approach the door.

19 Q. Now, these gunshots did they happen one  
20 right after the other or was there a pause?

21 A. Two first and then two after. There was a  
22 slight pause between the four.

23 Q. Okay. Now, as you approached the doorway  
24 -- is there a time when you get right in front of the  
25 door?

CL5

1                   A.    I just dismissed it immediately from my  
2                   mind, almost immediately and I approached the door.

3                   Q.    Okay. What happened when you approached  
4                   the door?

5                   A.    I was using my com key when the door flew  
6                   open. I was trying to enter the building, the door,  
7                   someone from inside opened the door.

8                   Q.    Now this door, how does it open, do you  
9                   push it in, how does it open?

10                  A.    You push it in.

11                  Q.    As soon as the door flew open from inside  
12                  did you see anyone on the other side of the door?

13                  A.    Yes, I did.

14                  Q.    Who was on the other side of that door?

15                  A.    This man which I know is named  
16                  Maganello was stepping out.

17                  Q.    Now, this man, Maganello, where do you know  
18                  him from?

19                  A.    I don't know him personally, but I know  
20                  he's a security person on the Parkchester premises  
21                  itself.

22                  Q.    Okay. When he opened the door, did the two  
23                  of you have any sort of conversation?

24                  A.    I said to him re-calling the four shots  
25                  which was four shots, I thought I heard four shots.

CL6

1 I did not get to open the door, he opened from the  
2 inside he says to me, yes, I did two. Then he  
3 pointed over my left shoulder you go that way and  
4 I'll go this way.

5 Q. Meaning for you to go that way and he'll go  
6 another way.

7 A. I still had yet to enter the building.

8 Q. Now, when he told you, you go this way and  
9 I'll go that way, did you comply with his directions  
10 or did you --

11 A. I just ignored him and I entered the  
12 building. He bypassed me and went out. I entered  
13 the building through the door.

14 Q. What portion of the building did you go in?

15 A. Well, in Parkchester they are termed  
16 terrace floors, because certain tenants live on those  
17 floors.

18 Q. Okay. This is below the lobby level?

19 A. Yes.

20 Q. In this particular building are there  
21 occupied apartments there, if you know?

22 A. No, they are different apartments, but not  
23 apartments per se. It's a garbage room, compactor  
24 room, carriage room where people store things.

25 Q. When you went into the building after you

CL7

1 spoke to Officer Maganello, was there anybody else  
2 down there that you encountered?

3 A. Yes, I encountered -- on my left first  
4 there was one door which is the pick-up station where  
5 the garbage is, it was closed.

6 The second door was open and there was a  
7 repairman, a telephone repair man from Verizon, he  
8 was working at the wires, the telephone wires.

9 Q. Did you speak with him?

10 A. Briefly I stopped and said hello, hey guy  
11 how are you. Then he proceeded walking. I proceeded  
12 walking towards the back of the floor where the  
13 compactors are.

14 Q. The garbage compactors?

15 A. Yes.

16 Q. What were doing there?

17 A. I was picking out the trash. I was keeping  
18 myself busy. We started from the basement and I cut  
19 a few bags to check down on the floors, and he called  
20 me over.

21 Q. Who called you over?

22 A. The Verizon man, the telephone repairman.

23 Q. When he called you over, what if anything  
24 did he ask you?

25 A. He wanted to know if the adjacent room, the

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1 room opposite to where I was, if I had keys because  
2 he wanted to see another outlet box for the telephone  
3 line.

4 Q. Okay. The door he was pointing to, was it  
5 locked?

6 A. Yes.

7 Q. Did you have keys for that door?

8           A. I happen to be in that building for the  
9        first time that day. I was not assigned that day,  
10       because the other fellow was away sick. So, I said  
11       let me try these keys, I'm new here today, sure  
12       enough one of my keys opened the door.

13 Q. When you opened the door to this room,  
14 what's in the room?

15                   A.    Well, in the room was total darkness. I  
16                   did not think anything. The Verizon guy turned on  
17                   the light, we both went in briefly, looked inside, no  
18                   box, we stepped away. I went back to my room, he  
19                   went back to his.

20 Q. You closed the door again or left it open?

21 A. It was left open.

22 Q. Was there anything to keep the door open?

23                   A.     The door was -- I opened the door, he was  
24                   standing next to me.  In Parkchester in the basement  
25                   we usually keep, we have a cobblestone that we use to

CL9

1 prop the doors open. I pushed one over and propped  
2 it on the door. I left him, he went to his  
3 respective room. I left the room.

4 Q. After you left the room the initial time  
5 that you put the cobblestone on the door, did there  
6 come a time that day when you went back into that  
7 room?

8 A. I passed it about three times within the  
9 next five or eight minutes. I did not look,  
10 something told me to look in. I saw a bunch -- it  
11 looked like a bundle of rags, a little further in  
12 there was a stove. At the foot of the stove there  
13 was rags.

14 I took out my flashlight as I approached it, I  
15 realized it was a body. As my light came up on the  
16 stove it was an officer's hat with a badge on the  
17 visor, my light was shining off of it. Then I heard  
18 a radio. I looked down and I went around I saw the  
19 blood. Then I realized I heard gurgling sounds. I  
20 said this guy is still alive. I ran out that's when  
21 I made my call.

22 Q. Who did you call?

23 A. I called first the Parkchester security  
24 department, I couldn't get through. So I said the  
25 hell with that, and I called 911, thinking this man

CL10

1                   was still alive to get an ambulance over. I was not  
2                   thinking police, I was just thinking about getting an  
3                   ambulance here. I got through to them quick.

4                   Q.     Did you remain at the building until the  
5                   police and ambulance came?

6                   A.     The police asked me where I was calling  
7                   from. I told them Parkchester, 1700, I told them I'm  
8                   a maintenance man, I work there. He said hang on the  
9                   line. I stood on the line til they showed.

10                  Q.     Was the phone man also there when the  
11                  police came?

12                  A.     At that point I ran out, I didn't see him  
13                  if he was still in the opposite room. But while I  
14                  was making the call I saw the van coming on the other  
15                  side of the lane. I said, you remember when we  
16                  opened the door. He said, yes. I said there was a  
17                  body laying in there. He stopped his van in the  
18                  middle of the street and ran back. He ran back to  
19                  the van and he made a call also.

20                  Q.     Okay. When the police did finally arrive  
21                  were you still present, you spoke with them?

22                  A.     Yes, I was still outside waiting for them.  
23                  I was still on the line, on the phone with them.

24                  MS. SCACCIA: Okay. At this time I do not have  
25                  any further questions of this witness.

CL11

1                   Do the Members of the Grand Jury have any  
2                   questions?

3                   Actually, Mr. Cobb, I do have a few more  
4                   questions for you.

5                   Q.    Were you there when the police arrived, did  
6                   there come a time when you saw Officer Maganello  
7                   return over there?

8                   A.    Yes, I did.

9                   Q.    Was the police with him at that point?

10                  A.    No, the security of Parkchester started  
11                  showing up after the police, but then he dashed in  
12                  with all the police officers, the New York City  
13                  Police Department and he wrangled his way through  
14                  them. Then he came back out which was less than a  
15                  minute, that's when they grabbed him.

16                  Q.    The officer you said grabbed him, were they  
17                  males or females officer, if you remember?

18                  A.    Male, mostly males, but there was two  
19                  females which was questioning him.

20                  MS. SCACCIA: Now, I'm going to ask that these  
21                  two photographs be deem marked for identification  
22                  purposes as People's 1 and 2.

23                  Q.    Mr. Cobb, I'm going to ask you to take a  
24                  look the photographs that I deem marked Grand Jury  
25                  Exhibit number 1 for identification. Do you

CL12

1 recognize the area shown in this photograph?

2 A. Yes.

3 Q. What is that picture of?

4 A. Well, the building. The lower half of the  
5 building itself, the entrance to the -- the back  
6 entrance to the building which happens to be on the  
7 main thoroughfare.

8 Q. Is that the entrance you described to us  
9 you were attempting to enter while Officer Maganello  
10 was walking out?

11 A. Yes.

12 Q. And, is that the way the building in that  
13 area looked on the date that we have been speaking  
14 about?

15 A. Yes, I'll remember that building for the  
16 rest of my life.

17 Q. I want to ask you now to take a look at  
18 that picture.

19 A. This is the door I propped open and the  
20 stove is back there.

21 Q. Okay. Is that the way you understand that  
22 the person was lying on the ground, more or less?

23 A. Except in front of the stove he was there  
24 lying across the front of it.

25 MS. SCACCIA: Based on your testimony I'm going

CL13

1 to ask that these two exhibits be moved into evidence  
2 for Grand Jury purpose as People's 1 and 2.

3 I will pass them around to the Jury in a moment.

4 Q. In this basement, Mr. Cobb, unless you had  
5 a key to get in that basement from the outside can  
6 you get in there without the key access?

7 A. I assume you can, anything is possible with  
8 some difficulty if you don't have keys.

9 Q. By the way, the room that the victim was  
10 lying in, does that room have any windows?

11 A. Yes, there is a window directly in front of  
12 where the stove is.

13 Q. Again directly in front of the stove?

14 A. Yes.

15 Q. In this particular picture that we have in  
16 evidence, now where the outside of the building is  
17 shown, is that the same window?

18 A. Yes, the window I heard the shots, the  
19 sounds coming from, before I approached the door to  
20 get into the building.

21 Q. When you gave access to the Verizon man to  
22 go into the room, did you have to physically unlock  
23 the door with your key?

24 A. Yes, I tried several keys before I opened  
25 it. I told him verbally, I'm going to try these

CL14

1       keys. I'm going to try to see if one of these will  
2       work and sure enough one of them opened the door.

3            MS. SCACCIA: Seeing no show of hands, you can  
4       step out.

5            (The photographs are being passed around to the  
6       Grand Jury.)

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CL15

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C E R T I F I C A T I O N

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I, CHERYL LAUREL, a Grand Jury Reporter  
within and for the State of New York, County of the  
Bronx, do hereby certify:

7 That the within transcript is a true and  
8 accurate record of the testimony given in the case of  
9 the People of the State of New York versus  
10 INVESTIGATION INTO THE DEATH OF ALBERT ACOSTA in the  
11 F PANEL & 4TH TERM on APRIL 18, 2001.

12 IN WITNESS WHEREOF, I have hereunto set my  
13 hand this 19TH day of APRIL, 2001.

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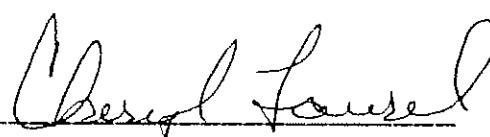
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CHERYL LAUREL

TP1

1 PEOPLE VS ANTHONY MANGIELLO

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3 A.D.A. SCACCIA/ 52 FROM: 4/18/01

4 DATE: APRIL 23, 2001 F / 4

5 REPORTER: THALIA PHARMAKIDES

6 GJ #: 42, 140 DOCKET: IBNA

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12 MS. SCACCIA: For the record, good afternoon,  
13 ladies and gentlemen. My name is Christine Scaccia,  
14 I am an Assistant District Attorney in Trial Division  
15 52.

16 This is a continuation of the case of the  
17 investigation into the death of Albert Acosta.

18 I would now ask the Grand Jury Foreperson to  
19 determine whether a quorum is present.

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21 FOREPERSON: Let the record reflect that a  
22 quorum is present.

23

24 MS. SCACCIA: The People now call Officer Perez.

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TP2

TP3

1 POLICE OFFICER PEREZ, after having been duly  
2 sworn, testified as follows:

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4 EXAMINATION BY MS. SCACCIA:

5

6 Q. Officer, could you please state your name,  
7 shield and command for the Members of the Grand Jury.

8 A. Police Officer Alex Perez, I work for the  
9 43 Precinct, shield 13912.

10 Q. Now, directing your attention to February  
11 12th of this year.

12 Were you working as a member of the 43 Precinct  
13 on that date?

14 A. Yes.

15 Q. And what tour were you working?

16 A. Eight to four.

17 Q. Eight in the morning?

18 A. Seven-thirty in the morning until 3:40 in  
19 the afternoon.

20 Q. And were you working alone or with a  
21 partner?

22 A. Partner.

23 Q. And who was your partner?

24 A. Officer Nieves.

25 Q. And were you in uniform?

TP4

1 A. Uniform.

2 Q. And what was your assignment that date?

3 A. Patrol in a radio car.

4 Q. And I want to direct your attention more  
5 specifically to 10:16 in the morning of February 12th  
6 of this year.

7 Did you have occasion to receive a radio run?

8 A. Yes.

9 Q. And can you please tell the Grand Jury what  
10 that radio run was about, and where you went after  
11 hearing it?

12 A. I received a call in the radio stating that  
13 an officer had been shot. At that point we received  
14 another radio transmission that it was at 1700  
15 Metropolitan, and it was an officer. And at that  
16 point we raced over to that location.

17 Q. Upon your arrival at 1700 Metropolitan,  
18 were you the first officers on the scene or were  
19 there other --

20 A. There was two other cars there.

21 Q. And in addition to police personnel, were  
22 there any civilians present at the scene?

23 A. Yes, Parkchester Maintenance.

24 Q. Upon your arrival at the scene, officer,  
25 where did you go?

TP5

1                   A.    We all went into the corridor where the  
2                    basement was at.

3                   Q.    Did you go into a lobby door or the main  
4                    entrance, or a side door?

5                   A.    A back door, down the stairs and then into  
6                    the area into the room where the officer was shot.

7                   Q.    And now what was downstairs in that  
8                    basement area?

9                   A.    It's empty rooms in a basement.

10                  Q.    And now before you got to 1700 you had  
11                  information that an officer had been shot.

12                  Did you know whether it was a Parkchester  
13                  security officer or NYPD?

14                  A.    We had no clue at that point.

15                  Q.    During the time that you responded there,  
16                  and even when you got there, was the identity of the  
17                  person that was shot known?

18                  A.    We didn't know who it was. We still assumed  
19                  it was a New York City Police Officer.

20                  Q.    And now did there come a point in time  
21                  well -- withdrawn.

22                  What did you -- you walked inside of that  
23                  basement area. What happened?

24                  A.    We get into the basement, confirmed that  
25                  the gentleman was shot in the back of the head.

TP6

1           We're searching to see if he has a weapon of his own.  
2           We're trying to figure out who he is, who he works  
3           for.

4           At that point my partner sees that he's  
5           Parkchester Police. While they're looking at him  
6           looking in the area, I go into the other rooms, start  
7           doing a canvass in the area seeing if there's any  
8           weapons hidden, seeing if there's a person hanging  
9           around. And at that point I stepped out and I  
10           started to question people outside.

11           Q. And while you were outside speaking with  
12           people, did you get to meet a person by the name of  
13           Walter Cobb?

14           A. Yes, I had a conversation with Mr. Cobb.

15           Q. And now sometime after your conversation  
16           with Mr. Cobb, does a security officer by the name of  
17           Anthony Mangiello arrive on the scene?

18           A. A gentleman does walk up at that point. I  
19           didn't know what his name was.

20           Q. Do you know his name now to be Anthony  
21           Mangiello?

22           A. Yes.

23           Q. When he comes on the scene, does he come  
24           out of a vehicle or on foot?

25           A. He comes out of the crowd.

TP7

1                   Q.    And can you describe to the Ladies and  
2                   Gentlemen of the Grand Jury what his appearance was  
3                   and with -- his demeanor was when he gets there?

4                   A.    Very disheveled.  Very pale, sweating.  At  
5                   one point we were going to call an ambulance for him.  
6                   He looked like he was ready to faint.  And he had  
7                   dust all over his uniform.

8                   Q.    And now the dust, was it a particular  
9                   color?

10                  A.    It was white, dusty.

11                  Q.    And is his uniform a dark color?

12                  A.    It's the same color, a dark blue.

13                  Q.    And now did you -- when Officer Mangiello  
14                  comes there, do you have a conversation with him?

15                  A.    No, I didn't speak to him.  My partner  
16                  ended up speaking to him.

17                  Q.    Up to that point in time, have you ever  
18                  heard the name Albert Acosta being mentioned as the  
19                  person what was shot?

20                  A.    No one mentioned anything about that.

21                  Q.    And other than the involvement that you  
22                  told us about here today, did you have any other  
23                  involvement with this?

24                  A.    No.

25

TP8

1 MS. SCACCIA: I have no further questions at this  
2 time.

3 Do any Members of the Grand Jury have any  
4 questions?

5 Seeing no show of hands, this witness is  
6 excused. And the People will now call Police Officer  
7 Nieves.

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TP9

1 POLICE OFFICER NIEVES, after having been duly  
2 sworn, testified as follows:

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4 EXAMINATION BY MS. SCACCIA:

5

6 Q. Good afternoon, officer.

7 Could you please state your name, shield number  
8 and command for the Members of the Grand Jury.

9 A. Police Officer Nieves, shield number 5089,  
10 43rd Precinct.

11 Q. Directing your attention to February 12th  
12 of this year.

13 Were you working as a member of the 43rd  
14 Precinct?

15 A. Yes, I was.

16 Q. And what hours did you work?

17 A. Eight to four tour.

18 Q. And did you work with a partner?

19 A. Partner.

20 Q. Who was your partner?

21 A. Officer Perez.

22 Q. And were you in uniform or plainclothes?

23 A. Uniform.

24 Q. And what was your assignment that day?

25 A. Patrol in a marked police car.

TP10

1 Q. And now, officer, I want to direct your  
2 attention approximately to 10:16 a.m. on the date of  
3 February 12th of this year.

4 Did you have occasion to respond over to 1700  
5 Metropolitan Avenue?

6 A. Yes.

7 Q. Can you tell us what brought you to that  
8 location?

9 A. We had a radio run of a police officer  
10 shot, 1013.

11 Q. And now when you responded to that  
12 location, officer, were you the first officers on the  
13 scene?

14 A. No.

15 Q. Okay, were there other officers --  
16 department personnel there?

17 A. Yes.

18 Q. And, okay, and once you arrived there, can  
19 you tell us where you went?

20 A. We went into the basement area of 1700  
21 Metropolitan Avenue.

22 Q. What, if any, observations did you make  
23 when you went into there?

24 A. We saw a male shot laying down on the  
25 floor, face down in uniform.

TP11

1 Q. And this person who was laying down on the  
2 floor, did you recognize what service he belonged,  
3 was it in NYPD or was it --

4 A. Parkchester Security.

5 Q. And did you recognize who this man was,  
6 officer?

7 A. I knew him from the area, yes.

8 Q. And now who was down located in the room  
9 where Officer Acosta was found by you and the other  
10 officers?

11 A. Say that again?

12 Q. What was downstairs in that room where he  
13 was?

14 A. A stove and that's it.

15 Q. And would you please, with respect to his  
16 uniform, Parkchester Police officers wear a uniform?

17 A. Yes.

18 Q. Was his uniform fully on him intact, or  
19 were there items of his uniform in other places?

20 A. His memobook was on top of the stove and  
21 his uniform jacket was in front of him as he laid on  
22 the floor.

23 Q. And what about a uniform hat, did you see  
24 one?

25 A. On the stove.

TP12

1 Q. And now did you remain in the room where  
2 Officer Acosta was, or did you go somewhere else?

3 A. A few minutes. And then I went outside.

4 Q. What happened when you go outside?

5 A. As I was walking out I saw one of the  
6 Parkchester officers, which was Anthony Mangiello,  
7 coming in. I figured they work together. He said I  
8 don't want to go in there. And he said that's my  
9 partner in there.

10 Q. And now when you encountered Officer  
11 Mangiello downstairs in that hallway area, could you  
12 please describe what his demeanor was like?

13 A. He seemed in shock, sort of shaky, and  
14 pale.

15 Q. And now up to this point, you, yourself had  
16 gone and seen Officer Acosta on the floor?

17 A. Yes.

18 Q. Was there any broadcasting of Officer  
19 Acosta's identity while you were present on the  
20 scene?

21 A. Not that I had heard of.

22 Q. Were other Parkchester officers present at  
23 the scene of the --

24 A. Eventually.

25 Q. Upon their arrival, to your knowledge, was

TP13

1 it known that Officer Acosta was the person inside  
2 who had been shot?

3 A. No.

4 Q. When you saw Officer Mangiello entering  
5 into the hallway area where the room where Officer  
6 Acosta was located, did you make any note -- mental  
7 note or otherwise, of the condition of his uniform or  
8 did you notice anything unusual about it?

9 A. I saw dust, the white dust.

10 Q. And when you saw him, was he coming off of  
11 the street or was he coming in from somewhere in the  
12 building?

13 A. From outside the street.

14

15 MS. SCACCIA: I have no further questions of this  
16 witness.

17 Do any Members of the Grand Jury have any  
18 questions?

19

20 Q. Officer Nieves, when you arrived, you said  
21 that other police personnel were on the scene?

22 A. Yes.

23 Q. Where were the other officers?

24 A. All running in. We were all running in at  
25 the same time.

TP14

1                   Q.     And as you stayed in the area, were  
2                   officers in and around the room where Officer Acosta  
3                   was?

4                   A.     Yes.

5                   Q.     When you saw Officer Acosta on the floor,  
6                   can you please tell us what the position of his body  
7                   was?    Was he face up?   Face down?

8                   A.     He was lying face down, his face turned to  
9                   the left, and his jacket underneath him.

10                  Q.     He was lying on his stomach but his face  
11                  was turned?

12                  A.     Approximately on the side of his face.

13

14                  MS. SCACCIA: Okay, seeing no show of hands, this  
15                  witness is also excused.

16                  Thank you.

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TP15

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C E R T I F I C A T I O N

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I, THALIA PHARMAKIDES, a Grand Jury  
Reporter within and for the State of New York,  
County of the Bronx, do hereby certify:

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That the within transcript is a true  
and accurate record of the testimony given in the  
case of the People of the State of New York  
versus ANTHONY MANGIELLO in the F / 4 on APRIL 23,  
2001.

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13

IN WITNESS WHEREOF, I have hereunto set my  
hand this 26TH day of APRIL, 2001.

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Thalia Pharakides

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THALIA PHARMAKIDES

CL1

1 PEOPLE VS INVESTIGATION CASE

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3 A.D.A. SCACCIA/TD50 FROM: 4/23/2001

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5 DATE: APRIL 26, 2001 F PANEL & 4TH TERM

6 REPORTER: CHERYL LAUREL

7 GJ #: 42,140 DOCKET: 2001BX024949

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10 \* \* \* \* \* \* \* \* \* \* \*

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12

13 MS. SCACCIA: For the record, good afternoon,  
14 ladies and gentlemen, my name is Christine Scaccia,  
15 I'm an Assistant District Attorney with Trial  
16 Division 50

17 This is the case of the People of the State of  
18 New York against Anthony Manganiello, also referred  
19 to as an investigation into the death of  
20 Albert Acosta

21 I would ask the Foreperson to determine whether  
22 a quorum is present

23 THE FOREPERSON: Let the record reflect that a  
24 quorum is present.

25 MS. SCACCIA: The People now call

CL2

1 Christopher Tartone.  
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CL3

1                   CHRISTOPHER TARTONE, after having been duly  
2                   sworn, testified as follows:

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4                   EXAMINATION BY MS. SCACCIA:

5

6                   Q.     Mr. Tartone, can you please state your full  
7                   name and the county you live in.

8                   A.     Christopher Tartone, the Bronx.

9                   Q.     Okay. Mr. Tartone, are you employed?

10                  A.     Yes.

11                  Q.     Where do you work?

12                  A.     In the pizza shop.

13                  Q.     Where is that pizza shop located?

14                  A.     1665 Metropolitan Avenue.

15                  Q.     Okay. How long have you worked there, sir?

16                  A.     About twelve years.

17                  Q.     Okay. Now, where is your pizza shop  
18                  located with respect to 1700 Metropolitan Avenue?

19                  A.     Two hundred yards, across the street from  
20                  there, the opposite side.

21                  Q.     Officer, during the course of the time you  
22                  worked in the pizza shop have you gotten to know any  
23                  of members of Parkchester either security or  
24                  maintenance?

25                  A.     Yes.

CL4

1                   Q.     What kind of contents did you get to know  
2                   them?

3                   A.     Just them eating, coming to the  
4                   establishment.

5                   Q.     During the course of your employment, did  
6                   you come to know a security officer by the name of  
7                   Anthony Manganiello?

8                   A.     Yes.

9                   Q.     Okay. How did you meet him?

10                  A.     Just coming in and eating.

11                  Q.     How long ago would you say you met  
12                  Mr. Manganiello?

13                  A.     Four years.

14                  Q.     How often would you see Mr. Manganiello?

15                  A.     Like once a month.

16                  Q.     Okay. I want to direct your attention now  
17                  to late January, early February of this year, did you  
18                  have an occasion to see Mr. Manganiello in your pizza  
19                  shop?

20                  A.     Yes.

21                  Q.     Okay. And could you tell the Members of  
22                  the Grand Jury during what time span on those  
23                  occasions you saw him at the end of January, the  
24                  beginning of February, what if anything took place  
25                  that was unusual?

CL5

1                   A.    He sat down with his coworker, I overheard  
2                    him asking if he knew anybody selling a gun.

3                   Q.    When you say he, who are you talking about  
4                   Anthony Manganiello?

5                   A.    Yes.

6                   Q.    And the person that he was speaking to, was  
7                   this person a male or female?

8                   A.    A male.

9                   Q.    Okay.  Was he white, black, Hispanic, could  
10                  you tell?

11                  A.    Brown complexion, that's all I remember.

12                  Q.    You said he was with his coworker, was he  
13                  also a security guard or another sort of worker?

14                  A.    No, he was a porter.  He was in a green  
15                  uniform, but he wasn't in a security uniform, no.

16                  Q.    Did you see what the other man responded?

17                  A.    No, I really kept making my pizza.  I was  
18                  making a pie, I overheard, but I really can't tell  
19                  you what was said after that.

20                  Q.    Mr. Tartone, if you know in your encounters  
21                  with the Parkchester security, do Parkchester  
22                  security officers carry weapons?

23                  A.    No.

24                  MS. SCACCIA:  I have no further questions.

25                  Do the Members of the Grand Jury have any

CL6

1           questions?

2           Seeing no show hands, I will excuse the witness.

3           Thank you.

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CL7

1 MS. SCACCIA: For the record, good afternoon  
2 ladies and gentlemen, my name is Christine Scaccia,  
3 I'm an Assistant District Attorney in Trial Division  
4 50.

5 This is a continuation of the case of the People  
6 of the State of New York versus Anthony Manganiello,  
7 also referred to as an investigation into the death  
8 of Albert Acosta.

9 I would now ask the Foreperson to determine  
10 whether a quorum is present.

11 THE FOREPERSON: Let the record reflect that a  
12 quorum is present.

13 MS. SCACCIA: The People call Police Officer  
14 Casiano.

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CL8

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2 POLICE OFFICER CASIANO, after having been duly  
3 sworn, testified as follows:

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5 EXAMINATION BY MS. SCACCIA:

6

7 Q. Officer, can you please state your name,  
8 rank, shield number and command for the Members of  
9 the Grand Jury.

10 A. Police Officer Jose Casiano, shield number  
11 14240, 43rd Precinct.

12 Q. Officer, how long have you worked for the  
13 43rd Precinct?

14 A. I have worked there ten and a half years.

15 Q. I want to direct your attention to  
16 February 12th of this year. Were you working as a  
17 member of the 43rd Precinct on that date?

18 A. Yes, I was.

19 Q. What hours did you work?

20 A. I did a 705 by 1540 hours.

21 Q. Which is basically 8:00 to 4:00?

22 A. Yes.

23 Q. Did you work alone or with a partner?

24 A. I was working with a partner.

25 Q. Who was your partner?

CL9

1 A. Police Officer Kalmanowicz.

2 Q. Were you guys in uniform or plainclothes?

3 A. Uniform.

4 Q. What was your assignment that day?

5 A. We were doing a patrol that day.

6 Q. In a radio car or on foot?

7 A. Radio car.

8 Q. I want to direct your attention more  
9 specifically to approximately 10:20 a.m., on that  
10 day.

11 Did you have an occasion to respond to  
12 1700 Metropolitan Avenue here in Bronx county.

13 A. Yes, we did.

14 Q. And, once you were there were you directed  
15 into a particular portion of the building?

16 A. Yes.

17 Q. Where did you go?

18 A. We went into the basement of that building.

19 Q. What if anything did you see upon going  
20 into the basement?

21 A. I observed an individual on the ground.

22 Q. Okay. The individual's condition appeared  
23 to be what?

24 A. He appeared to be shot.

25 Q. Was the individual on the ground able to

CL10

1 respond in anyway?

2 A. No, ma'am.

3 Q. Did there come a time when you learned the  
4 identity of this individual who had apparently been  
5 shot?

6 A. Yes, ma'am.

7 Q. Do you recall what his name was?

8 A. Yes, Albert Acosta.

9 Q. Now, Officer, did there come a time when  
10 you took into possession, into your possession any of  
11 Mr. Acosta's possession?

12 A. Yes.

13 Q. What did you take into custody from him?

14 A. Well, I have to refresh my memory from my  
15 memo book.

16 Q. Sure.

17 A. Yes, personal nature.

18 Q. Did it consist of his clothing and  
19 identification?

20 A. Correct, clothing, jewelry and  
21 identification card.

22 Q. Now, was Mr. Acosta removed from the  
23 basement of 1700 Metropolitan Avenue at any point?

24 A. Yes, he was.

25 Q. Do you know where he was taken?

CL11

1           A.    He was taken to Jacobi Hospital.

2           Q.    Did you go with him, officer, or did you  
3           remain at the scene?

4           A.    I remained at the scene.

5           Q.    The property that you eventually took  
6           custody from Mr. Acosta's person, what if anything  
7           did you do with that property?

8           A.    I vouchered it.

9           MS. SCACCIA: I have no further questions of  
10           this witness.

11           Do the Members of the Grand Jury have any  
12           questions?

13           Seeing no show of hands, this witness is  
14           excused.

15           Thank you.

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CL12

1 MS. SCACCIA: The People are now calling  
2 Detective Luis Agostini.  
3 .

4 DETECTIVE LUIS AGOSTINI, after having been duly  
5 sworn, testified as follows:  
6 .

7 EXAMINATION BY MS. SCACCIA:  
8 .

9 Q. Detective, can you please state your name,  
10 rank, shield number and command for the Members of  
11 the Grand Jury.

12 A. Detective Luis Agostini, shield number  
13 1230, 43rd Detective Squad.

14 Q. Detective, how long have you been with the  
15 43rd Detective Squad?

16 A. For approximately four years.

17 Q. Detective, I want to direct your attention  
18 to February 12th of this year, were working as a  
19 member of the 43rd Precinct Detective Squad?

20 A. Yes.

21 Q. And, did you have an occasion on that day  
22 to become assigned to an investigation into the death  
23 of Albert Acosta?

24 A. Yes.

25 Q. Now, I direct your attention to

CL13

1 approximately 10:30 a.m., on that day. Did you have  
2 an occasion to respond over to 1700 Metropolitan  
3 Avenue here in Bronx county.

4 A. Yes, I did.

5 Q. And, when you got there was Mr. Acosta  
6 present at the scene?

7 A. No, he wasn't

8 Q. Who was present at the scene?

9 A. Mainly the police

10 Q. Did there come a time when you saw  
11 Mr. Acosta somewhere?

12 A yes

13 0 Where did you see him

## 14 A At Jacobi Hospital

15 Q. When you got to Jacobi Hospital, what  
16 condition was he in at that time.

17                   A.     At that time the doctors were working on  
18                   him.

19 Q. Were you able to speak to Mr. Acosta in  
20 2000-2

31 1 15

22 Q. Detective, as a result of you becoming  
23 assigned the investigation into this case, did there  
24 come a time when you became aware of or in the  
25 custody of any items of ballistic nature that was

CL14

1 recovered?

2 A. Yes, I did.

3 Q. Can you tell the Members of the Grand Jury  
4 what if any items of a Ballistic nature was recovered  
5 pursuant to that investigation?

6 A. There was two, .22 caliber fragments that  
7 was recovered from his head and two, .22 caliber  
8 rounds on 1700 Metropolitan Avenue basement wall.

9 Q. Okay. And, other than the fragments and  
10 bullets was there anything else of a Ballistic nature  
11 recovered?

12 A. Yes, there were four, .22 caliber shells  
13 recovered.

14 Q. Now, when you saw Mr. Acosta at Jacobi  
15 Hospital you said doctors were still working on him,  
16 he was alive?

17 A. Yes.

18 Q. Did there come a time when you were  
19 notified of any change in his condition?

20 A. Yes.

21 Q. Was that in relation to the morning of  
22 February 12th?

23 A. That was approximately late at night, that  
24 same day.

25 Q. Okay. And, what was the change in

CL15

1                   Mr. Acosta's condition?

2                   A.    That he had died.

3                   Q.    After you learned of Mr. Acosta's death,  
4                   did there come a time when you again saw Mr. Acosta?

5                   A.    Yes.

6                   Q.    What was his condition at that time?

7                   A.    He was dead.

8                   Q.    Now, Detective Agostini, again as part of  
9                   the investigation and your duties in this case, did  
10                   there come a time, when you came in possession of  
11                   Mr. Acosta's clothing items from the medical  
12                   examiner's office?

13                   A.    Yes, I did.

14                   Q.    Okay. And, was there a medical examiner's  
15                   case number assigned to Mr. Acosta's body and his  
16                   belongings?

17                   A.    Yes.

18                   Q.    Could you tell the Members of the Grand  
19                   Jury what the medical examiner's case number was?

20                   A.    It was 595 of the year 2001.

21                   Q.    Now, Detective, pursuant to this  
22                   investigation into this case, did there come a time,  
23                   when someone was placed into custody?

24                   A.    Yes, there was.

25                   Q.    Who was placed into custody?

CL16

1 A. Anthony Manganiello.

2 Q. Okay. Now, Detective, working within the  
3 confines of the 43rd Precinct is Parkchester within  
4 the 43rd Precinct?

5 A. Yes.

6 Q. Have you had some dealings with the  
7 security officers from Parkchester prior to becoming  
8 involved in this case?

9 A. Yes.

10 Q. Could you tell the ladies and gentlemen of  
11 the Grand Jury whether or not Parkchester Police  
12 Officers or security officers authorized to carry  
13 weapons while they are on duty?

14 A. They are not.

15 Q. Detective, you indicated that two bullet  
16 fragments were removed from his head?

17 A. Yes.

18 Q. Pursuant to this investigation, Detective,  
19 the two bullet wounds that Mr. Acosta suffered was on  
20 his body?

21 A. Yes.

22 Q. Where were they?

23 A. The two wounds were in back of the head.

24 MS. SCACCIA: I have no further questions of  
25 this witness.

CL17

1                   Do the Members of the Grand Jury have any  
2                   questions?

3                   Seeing no show of hands, this witness is  
4                   excused.

5                   Thank you.

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CL18

1 MS. SCACCIA: I'm now holding in my hands a  
2 one-page document which I'm going to have deem marked  
3 for identification as People's number 3 for the Grand  
4 Jury purposes.

5 Reading from the certification on the bottom.

6 I certify that I personally examined the body on  
7 February 14, 2001, at the Office of the Chief Medical  
8 Examiner's.

9 It has the signature of Yvonne Milewski.

10 I now ask what was previously deem marked into  
11 evidence for Grand Jury purposes.

12 Reading in pertinent part:

13 Name of decease: Albert Acosta.

14 Place of death, Bronx.

15 Date and hour of death: February 12, 2001.

16 Death was caused by gunshot wound to the head  
17 with perforation of skull and brain.

18 Injury date: February 12, 2001.

19 Medical Examiner's case number assigned:

20 BX595 of the year 2001.

21 On the basis of examination and/or investigation  
22 in my opinion, death occurred due to the causes and  
23 manner as stated.

24 Certifier signature Dr. Yvonne Milewski, on  
25 February 14, 2001.

CL19

1                   Again Dr. Yvonne Milewski is the Deputy Chief  
2                   Medical Examiner in the Office of the Chief Medical  
3                   Examiner, City of New York, county of the Bronx.

4                   That concludes the presentation of evidence to  
5                   the Grand Jury.

6                   I would ask the Foreperson to instruct the jury  
7                   as to its voting requirements.

8                   THE FOREPERSON:    Let the record reflect that a  
9                   quorum is present.

10                  The panel is reminded that only those Grand  
11                  Jurors who have heard all of the evidence presented  
12                  in this case may vote, and an affirmative action or  
13                  decision requires the concurrence of at least twelve  
14                  Grand Jurors thereto.

15                  May I have a show of hands of all of the Grand  
16                  Jurors who heard all of the evidence.

17                  Let the record reflect that at least twelve of  
18                  the Grand Jurors present heard all of the evidence  
19                  given in the case.

20                  MS. SCACCIA:  Ladies and gentlemen, I'm going to  
21                  remind you of the instruction I gave to you at the  
22                  beginning of the case regarding publicity.

23                  I'm going to begin my legal instructions to you  
24                  by reading to you the circumstantial evidence charge  
25                  which applies to all of the charges I'm going to be

CL20

1                   submitting to you today.

2                   Evidence may be direct or circumstantial and I  
3                   will now explain the difference between these two  
4                   types of evidence.

5                   Direct evidence is where a witness testifies to  
6                   what he saw, heard, smelled, tasted, or touched, in  
7                   other words, what he knows of his own knowledge.

8                   Circumstantial evidence flows from direct evidence.  
9                   It is proof of a chain of circumstances from which  
10                  you may infer or conclude that a fact does exist.

11                  When determining circumstantial evidence, you  
12                  may only draw an inference or conclusion from a fact  
13                  or facts proved by direct evidence. Circumstantial  
14                  evidence is of no less value than direct evidence,  
15                  for in either case you must be convinced that there  
16                  is reasonable cause to believe the defendant  
17                  committed the crimes.

18                  Let me give you one example. Let us assume that  
19                  you entered this building earlier today, and it was a  
20                  clear day. Let us also assume that this room has no  
21                  windows. Now somebody walks into the room wearing a  
22                  wet raincoat and carrying a dripping umbrella. Based  
23                  on our assumption, you cannot look out of the room to  
24                  see whether or not it is raining, and if you are  
25                  asked if it is raining, you cannot say that you know

CL21

1           it directly of your own observation. But certainly  
2           upon the combination of facts as given, even though  
3           when you entered the building it was not raining  
4           outside, it would be reasonable and logical for you  
5           to conclude that it is raining now.

6           If inferences can be drawn from a fact directly  
7           proved to you, one consistent with innocence and one  
8           consistent with guilt, you must give the defendant  
9           the benefit of the doubt. An indictment may rest  
10          upon circumstantial evidence alone, but for this  
11          there must be compliance with certain well  
12          established facts:

13           First, the collateral fact, such as the umbrella  
14          dripping water and a man with a wet raincoat, must be  
15          proved to your satisfaction by direct evidence;.

16           Second, the direct evidence proven must be  
17          sufficient to give rise to an inference, such as it  
18          is now raining outside, which is logical, clear, and  
19          strong;.

20           Third, you must determine whether the total  
21          effect of all the circumstances directly proved  
22          persuades that you there is reasonable cause to  
23          believe that all the elements of each crime submitted  
24          actually exists.

25           I'm going to ask you to consider one count of

CL22

1       murder in the second degree under Penal Law section  
2       125.25, sub 1, intentional murder.

3           A person is guilty of murder in the second  
4       degree when:

5           1. With intent to cause the death of another  
6       person, he causes the death of such person or of a  
7       third person.

8           A person acts intentionally with respect to a  
9       result or to conduct described by a statute defining  
10      an offense when his conscious objective is to cause  
11      such result or to engage in such conduct.

12           I'm also going to ask you to consider one count  
13      of murder in the second degree under depraved  
14      indifference to human life, reading from Penal Law  
15      section 125.25, subdivision 2.

16           A person is guilty of murder in the second  
17      degree when:

18           2. Under circumstances evincing a depraved  
19      indifference to human life, he recklessly engages in  
20      conduct which creates a grave risk of death to  
21      another person, and thereby causes the death of  
22      another person.

23           Recklessly, A person acts recklessly with  
24      respect to a result or to a circumstance described by  
25      a statute defining an offense when he is aware of an

CL23

1       consciously disregards a substantial and  
2       unjustifiable risk that such result will occur or  
3       that such circumstance exists. The risk must be of  
4       such nature and degree that disregard thereof  
5       constitutes a gross deviation from the standard of  
6       conduct that a reasonable person would observe in the  
7       situation.

8           I'm going to now ask you to consider one count  
9       of manslaughter in the first degree under subdivision  
10      1, manslaughter in the first degree.

11       A person is guilty of manslaughter in the first  
12      degree according to Penal Law section 125.20,  
13      subdivision 1, when:

14           1. With intent to cause serious physical injury  
15      to another person, he causes the death of such person  
16      or of a third person.

17       I must define for you serious physical injury.

18       First of all physical injury means impairment of  
19      physical condition or substantial pain.

20       Serious physical injury means physical injury  
21      which creates a substantial risk of death, or which  
22      causes death or serious and protracted disfigurement,  
23      protracted impairment of health or protracted loss or  
24      impairment of the function of any bodily organ.

25       Lastly, I'm asking you to consider one count of

CL24

1        criminal possession of a weapon in the second degree  
2        under Penal Law section 265.03, subdivision 2.

3           A person is guilty of criminal possession of a  
4        weapon in the second degree when, with intent to use  
5        the same unlawfully against another:

6 2. He possesses a loaded firearm

7                   Loaded firearm is defined in Penal Law section  
8                   265.00

9                   Loaded firearm means any firearm loaded with  
10                   ammunition or any firearm which is possessed by one  
11                   who, at the same time, possesses a quantity of  
12                   ammunition which may be used to discharge such  
13                   firearm.

14 Firearm of course means any pistol or revolver.

15                   Does anyone have any questions on the charges,  
16                   that I have asked you to consider?

17 Let the record reflect that the Court  
18 Stenographer and I are stepping outside the Grand  
19 Jury Chambers in order for the jury to conduct its  
20 deliberations.

21 Thank you.

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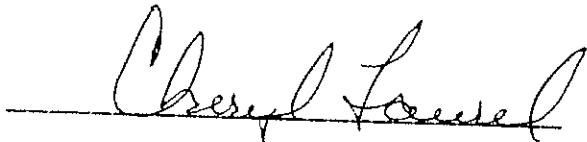
CL25

1 C E R T I F I C A T I O N  
2  
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5 I, CHERYL LAUREL, a Grand Jury Reporter  
6 within and for the State of New York, County of the  
7 Bronx, do hereby certify:  
8

9 That the within transcript is a true and  
10 accurate record of the testimony given in the case of  
11 the People of the State of New York versus  
12 INVESTIGATION CASE in the F PANEL & 4TH TERM on  
13 APRIL 26, 2001.

14  
15  
16 IN WITNESS WHEREOF, I have hereunto set my  
17 hand this 27TH day of APRIL, 2001.  
18

19  
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CHERYL LAUREL